

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Connect America Fund	)	
A National Broadband Plan	)	
for Our Future	)	
Establishing Just and Reasonable	)	
Rates for Local Exchange Carriers	)	
High-Cost Universal Service Support	)	
Developing a Unified Inter-carrier	)	
Compensation Regime	)	
Federal-State Joint Board on Universal	)	
Service	)	
Lifeline and Link-Up	)	WC Docket No. 10-90
Universal Service Reform —	)	GN Docket No. 09-51
Mobility Fund	)	WC Docket No. 07-135
		WC Docket No. 05-337
		CC Docket No. 01-92
		CC Docket No. 96-45
		WC Docket No. 03-109
		WT Docket No. 10-208

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**COMMENTS OF THE MONTANA  
INTERNET CORPORAION  
ON CENTURYLINK’S PETITION FOR A  
WAIVER**

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By Public Notice dated June 27, 2012<sup>1</sup>, the Wireline Competition Bureau seeks comment on CenturyLink’s Petition (“Petition”) for a limited waiver of section 54.312(b) of the Commission’s rules adopted as part of the Commission’s USF/ICC Transformation Order.<sup>2</sup> In its Petition CenturyLink indicates that it qualifies for approximately

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<sup>1</sup> *Comment Sought on CenturyLink’s Petition for Waiver of Section 54.312(b)*, WC Docket Nos. 10-90, 05-337, Public Notice, DA 12-1007 (rel. June 27, 2012) (*Public Notice*).

<sup>2</sup> *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Inter-carrier Compensation Regime; Federal-State Joint*

\$90,000,000 (ninety million dollars) of support from the Connect America Fund (“CAF”). Petition, p. 3. CenturyLink seeks the Commission’s permission to use approximately one-third of that money, about \$32,500,000 (thirty-two million five hundred thousand dollars), as it chooses, rather than as designated by the Commission. *Id.* The net result is that CenturyLink will be taking about one-sixth of the CAF and using that money as it deems appropriate, regardless of the Commission’s goals for the use of these funds. CenturyLink does not have and will not incur any “obligation” to serve “42,000 additional living units”<sup>3</sup> unless it accepts the funds for their intended purposes: to serve unserved areas as defined by the Commission.<sup>4</sup>

The Montana Internet Corporation (“MIC”)<sup>5</sup> requests the Commission reject CenturyLink’s Petition to use approximately one-sixth of the CAF at its discretion without regard for the Commission’s framework. Section 54.312(b) of the Commission’s rules provides that recipients of Connect America Fund Phase I incremental support must deploy broadband to locations identified as unserved by fixed broadband on the National Broadband Map (NBM). CenturyLink seeks a waiver so that it may deploy to locations within certain specified areas shown on the NBM as served by fixed providers that

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*Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663 (2011) (*USF/ICC Transformation Order*); *pets. for review pending sub nom.* In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

<sup>3</sup> Petition page 16.

<sup>4</sup> USF/ICC Transformation Order paragraphs 138-146.

<sup>5</sup> Montana Internet Corporation (MIC) is one of the 37 WISPs listed here: [http://www.centurylink.com/static/CTL\\_CAF1\\_Waiver\\_Petition/4\\_ExB\\_WISPs\\_Covered\\_etc.pdf](http://www.centurylink.com/static/CTL_CAF1_Waiver_Petition/4_ExB_WISPs_Covered_etc.pdf).

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CenturyLink contends those providers do not fully serve. This nebulous assertion is predicated on CenturyLink's unilateral definition of "unserved." In short, CenturyLink is seeking to reallocate the CAF to overbuild certain areas that are in fact served by Wireless Internet Service Providers (WISPs).

The Commission's objective in establishing the CAF is to set out "a measurable, enforceable obligation to extend service to unserved locations during CAF Phase I."<sup>6</sup> The Commission considered relevant data, input from industry, broadband deployment projects underway, and specifically selected a mechanism to "expand voice and broadband availability as much and as quickly as possible." USF/ICC Transformation Order. ¶ 145. CenturyLink may elect to take the funds for which it is eligible and to use those monies to deploy broadband in unserved areas; it may elect to decline the funds. CenturyLink's proposed "third way" of taking the money and using it where it wants eviscerates the goal of the Commission to "ensure that all areas get broadband-capable networks, whether through the operation of the market or through support from USF." *Id.* ¶ 145. Carriers accepting CAF support continue to have the historical flexibility to use such support in ways that it is best able to do so. *Id.* However, carriers may not use the support in areas that are already served. As the Commission stated "CAF Phase I incremental support is designed to provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider." *Id.* ¶ 137. The support is not designed to provide a boost to deployment in areas that are not served *well enough*, in

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<sup>6</sup> USF/ICC Transformation Order paragraph 139.

CenturyLink's viewpoint; but rather, to areas that are unserved as defined by the Commission. CenturyLink's attempt to reallocate one-sixth of the CAF should be rejected.

The Commission specifically analyzed and addressed the issues raised by CenturyLink:

The term "unserved by fixed broadband" for the purpose of CAF Phase I includes areas not identified by the National Broadband Map as served by at least one of the following technologies: asymmetric xDSL, symmetric xDSL; other copper wireline; cable modem - DOCSIS 3.0; cable modem - other; electric power line; terrestrial fixed wireless - unlicensed; and terrestrial fixed wireless - license. For the purposes of CAF Phase I we find it appropriate to distinguish fixed from mobile broadband service. [...] We acknowledge that some have claimed that the National Broadband Map is not completely accurate. Nevertheless, **we find that using it in this way**, along with our requirement that carriers certify that the areas to which they intend to deploy are unserved to the best of each carrier's knowledge, **is a reasonable and efficient means to identify areas that are, in fact, unserved**, even if there might be other areas that are also unserved.

USF/ICC Transformation Order footnote 231 (emphasis added, citations omitted).

CenturyLink is simply raising an old protest in a new venue. Having been designated as eligible for almost ninety million dollars of the CAF, it wishes to have the opportunity to use more than a third of that as it chooses, rather than as the Commission designated after input and analysis from all parties. The Rubicon has been crossed with respect to this issue: unserved areas are those that are not served by fixed wireless providers. *Id.* Regardless of CenturyLink's opinion of the quality of service provided, these areas have been deemed served by the Commission and CAF incremental support may not be used to build out broadband in these areas. CenturyLink is certainly capable of using other funding to build out in these areas; the Commission has not precluded that.

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The CAF was designed to provide services to citizens who reside in areas where no broadband Internet is available and there is no market case to be made to deploy broadband to those areas without support. MIC is a local Montana corporation created in 1994 and owned by the many shareholders who have invested in a company to provide Internet service where none existed before. MIC has made a strategy of investments throughout the years based on customer demand and technology availability. MIC has never relied upon government hand-outs and has independently financed and provided high quality Internet service coupled with superlative customer service.

Operating in a small community for nearly two decades, MIC has developed a staunch and loyal customer base; many of whom send cards and letters complimenting the wonderful customer service MIC provides. In contrast, CenturyLink recently made Yahoo Finance list of the fifteen most disliked companies in the country. See <http://finance.yahoo.com/news/the-15-most-disliked-companies-in-america.html?page=2>.

There are huge geographic areas in Montana where terrestrial broadband Internet service is not available, leaving only satellite broadband. One of the Commission's goals in creating the CAF was to target those unserved areas for build out, not to allow carriers like CenturyLink to unilaterally shift support to areas it considers inadequately served. Overbuild of WISP coverage areas is not the goal for the CAF, and undermines the business case that MIC and other WISPs have carefully built up over the years.

CenturyLink asserts that WISPs coverage areas shown on the National Broadband Map (NBM) are implausible. The Commission explicitly addressed this concern and

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concluded that using the NBM even considering its inaccuracies “is a reasonable and efficient means to identify areas that are, in fact, unserved, even if there might be other areas that are also unserved.” USF/ICC Transformation Order ¶ 146 footnote 231.

Further, inaccuracies in the NBM cut both ways. While CenturyLink is arguing that many WISPs have overstated their coverage, MIC's coverage on the Broadband map is wildly understated. Today, MIC has a much greater footprint than when the current edition of the NBM was produced. In any event, the Commission's decision regarding CenturyLink's Petition should be consistent with the predicate analysis undertaken in developing the CAF in the first instance.

In addition, MIC markets its speeds in its coverage footprint at the low end, setting out its committed rate, whereas most other providers, including CenturyLink in its Petition, represent an “up to” rate which they may or may not, and generally don't, provide. In order for the NBM to be accurate in relation to this footprint MIC's coverage would need to be updated to reflect its current footprint, and the speed availability increased to around 5-10 Mb/s across that footprint. Because of this inaccuracy, MIC agrees that allocating support solely based upon the data in the NBM isn't the best option.

However, CenturyLink asks the Commission to simply ignore data where that data may inhibit its quest to use one-sixth of the CAF as it deems appropriate. MIC proposes that CAF recipients be required to verify actual coverage for proposed CAF projects with known incumbents in the area, so as to neither exclude areas which should be eligible for CAF support, nor use CAF support to overbuild areas which already have sufficient broadband, especially where those areas were added after the current edition of the NBM.

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CenturyLink asserts in its Petition that MIC shares “many or all of the same core attributes that led the FCC to exclude satellite broadband service from identification of areas as “unserved” for CAF Phase I purposes.” Petition p. 1, quotations in original. Specifically, CenturyLink complains that WISPS “confront *capacity* constraints that limit widespread simultaneous use of their spectrum at the speeds necessary to run bandwidth-intensive applications.” Petition p. 1. MIC contests this assertion. The majority of MIC’s network is served by a 300 Mbps backbone allowing MIC to provide much higher bandwidth to customers than CenturyLink does in neighboring areas. Additionally, CenturyLink has locations in MIC’s service area where multiple customers are being served “up to 1.5 Mbps” DSL service from a DSLAM fed with a single T1 circuit, which would have the effect of severely over-subscribing the capacity of the DSLAM.

CenturyLink next asserts that WISPS like MIC “suffer from *line-of-sight* restrictions that keep these WISPs from providing any service at all to countless locations even within their actual coverage areas.” Line-of-sight restrictions can be a legitimate issue with WISP broadband deployment. However, WISPS like MIC address this issue to serve their customers. Specifically, most of MICs coverage area is covered by more than a single access point (AP) to mitigate the line-of-sight issue. Additionally, MIC has an ongoing build-out to provide additional AP's necessary to cover prospective customers outside the line-of-sight. Importantly, MIC does this build out without requesting or receiving government subsidies.

With respect to CenturyLink’s complaint that WISPs “charge *higher monthly rates* than wireline broadband providers, even though their service is slower and less reliable”

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MIC directs the Commission to consider CenturyLink's charges (for Internet alone, no bundling) of \$134.89 non-recurring charge plus \$29.99 per month for "up to" 1.5 Mbps DSL service plus "up to" \$99.95 for a technician installation. This includes "Promotional Pricing" per their web page. Regular pricing without promotions are not listed. The DSL modem for \$99 carries a one-year warranty. In comparison, MIC charges \$30 per month for bursting up to 10 Mbps service and \$250 for a technician installation. However, MIC has promotional pricing on much of its footprint providing installation for \$99. MIC warrants its equipment for the lifetime of the service providing technician visits at no charge to the customer as long as the customer is current. If the Commission compares apples to apples, MIC is more cost effective than CenturyLink for a better service. MIC could provide even better pricing if it were afforded even a fraction of the CAF that CenturyLink is receiving.

Regarding CenturyLink's assertion that WISPs "charge high up-front *installation and equipment fees*," MIC's installation charges, as noted above, are between \$99 and \$250 but included in those prices are lifetime-of-the-service upgrade, repairs, and replacement when necessary. Comparing these prices to CenturyLink's, there is no question that MIC provides a superior product at more affordable pricing, and CenturyLink's contention fails.

CenturyLink argues that WISPs "subject users to far more stringent *data caps* than wireline broadband providers do, allocating to each user only a tiny fraction of the usage bucket provided under typical wireline broadband plan." Petition page 1. This is false. MIC does not currently even monitor individual customer usage. Data cap language in

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MIC's agreements are solely for the purpose of protecting all of its customers from potentially harmful actions of a single customer.

In sum, CenturyLink's likening of MIC's service to that of broadband via satellite, infers that MIC's service is inferior, or at least similar in quality, to satellite. In truth, MIC's service is superior to that offered by CenturyLink's for at least the following reasons:

- **Network Capacity:** The technology MIC uses today is capable of delivering 252 Mb/s per distribution site, when using 5.7 and 2.4 Ghz bands fully. The next generation technology, which MIC plans on deploying near the end of the year, is capable of 1.4 Gb/s, and roughly double to triple that if MIC utilizes the 5.3 and 5.4 Ghz bands for distribution. Many of MIC's sites are fed with 300 Mb/s full duplex (600Mb/s aggregate) feeds. MIC grows its sites as necessary to provide a good quality service to its customers. In contrast, CenturyLink can potentially provide dedicated bandwidth from the DSLAM to the customer, the exact amount depending on loop distance from the DSLAM to the customer. However, from the DSLAM's to the core is another story. Many remote DSLAM's are fed with T1-level circuits (1.5 Mb/s). The net result is that customers fight for the bandwidth on that insufficient backhaul, creating the same problem CenturyLink argues justifies reallocation of CAF support to the areas identified in its Petition. At remote communities, often the higher capacity circuit feeding the community is also undersized, resulting in increased latency, packet loss, and significantly reduced speeds. Even in the central office, where capacity upgrades should be as

simple as adding cards to an ATM switch, they have chosen to daisy chain their DSLAM's to support numerous customers over a single DS3 interconnect. In the Helena, Montana central office, a problem of this nature has continued for years, with CenturyLink (and Qwest before it) being fully aware of the issue, yet never seeming to be able to allocate the funds to resolve it.

- **Speed:** CenturyLink asserts that MIC's speeds are somehow inferior to what it can provide. Currently, over much of CenturyLink's coverage area, maximum "up to" speeds are around 7 Mb/s. MIC's equivalent rate over most of its network is currently 10 Mb/s, with some areas where 40 Mb/s is available now and 80 Mb/s expected by the end of the year. It should be noted that all of the MIC plans come with a committed rate as well, whereas it appears that CenturyLink makes no contractual assertion at all about what speed the customer will actually get. Independent sources verify that on average, MIC provides higher speeds to its customers than CenturyLink provides to its customers. The most accessible of these is netindex.com, which is based on actual speed tests performed by customers on speedtest.net's site. The resulting speed tests are then averaged on a per-ip basis, and published. For Montana, MIC's average download speed is 5.04 Mb/s, compared to CenturyLink's 3.8 Mb/s. On a more local basis, in Helena, Montana, MIC's average is 5.08 Mb/s, and CenturyLink's is 2.73 Mb/s. This data completely usurps CenturyLink's claims that it can provide superior speeds, and belies its assertion that WISPs are inherently inferior based on technology alone.

- **Transfer Caps:** MIC's customer agreements include language that is similar to CenturyLink's approach to transfer caps. Carriers generally publish these caps and include them in their agreements in order to have the ability to address customer behavior that may cause network problems. MIC has had less than a handful of encounters with this issue in its nearly twenty years of history in the business, the most recent of which involved a customer who was unaware of the effect leaving the pipe open 24 hours a day for several weeks had on other customers.
- Rather than strictly applying data caps, MIC's policy is to contact its customers and explain the impact their usage has on other customers. As a small provider in a local community, MIC is able to do this in a way that a carrier like CenturyLink cannot. CenturyLink's representations regarding transfer caps imply that WISPs arbitrarily and automatically shut a customer down once the cap is reached. This assertion is not based on evidence and is not an accurate statement of MIC's approach to the caps. CenturyLink's argument that WISPs operate like satellite and therefore WISPs service areas should be categorized as unserved areas based on how transfer caps are used fails.

Finally, Centurylink's argument regarding the "unused funds" ignores the Commission's explicit statement addressing the fact that some carriers might decline incremental support they are eligible to receive. The Commission noted: "To the extent incremental support is declined, it may be used in other ways to advance our broadband objectives pursuant to our statutory authority." USF/ICC Transformation Order ¶ 138.

The Commission set out specific potential uses for CAF support a carrier declines to use. *Id.*, footnote 221. CenturyLink may use the funds for which it is eligible, for the uses identified. To allow CenturyLink to allocate these monies to areas that it considers “unserved” without a Commission determination as to how that is defined and what evidence such an assertion is based on, is to allow an end run around the Commission’s procedures that are in place to ensure universal service support accomplishes its intended goals. CenturyLink seeks to modify the rules to accomplish its own objectives rather than adhering to the Commission’s goals. The Petition should be denied.

In the alternative, the Commission should at a minimum deny CenturyLink’s Petition with respect to MIC’s service area. CenturyLink has provided no evidence that MIC’s service area can be considered “unserved” and CenturyLink cannot meet the certification required by the Commission’s rules to qualify for CAF support with respect to MIC’s service area.<sup>7</sup> MIC serves the areas delineated in the attached map.<sup>8</sup> Under no circumstances can CenturyLink claim that it is using CAF support to build out in unserved areas where such money is being funneled into infrastructure designed to serve areas served by MIC.

### **Conclusion**

For the foregoing reasons, MIC respectfully requests the Commission deny CenturyLink’s Petition; or, at a minimum, deny CenturyLink’s Petition with respect to MIC’s service area.

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<sup>7</sup> See 47 C.F.R. § 54.312(b)(3); also *Connect America Fund*, WC Docket Nos. 10-90, et al., Second Order on Reconsideration, FCC 12-47, paras. 8-9 (rel. Apr. 25, 2012).

<sup>8</sup> See Map of MIC service area, attached as Exhibit A.

Respectfully submitted this 11<sup>th</sup> day of July, 2012.



Chuck Siefert  
Chief Executive Officer  
Montana Internet Corporation